

The Urgency of Regulating Remote Working System In Indonesia Between Certainty and Utility

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Abstract: *The absence of comprehensive regulations regarding remote work in Indonesia has given rise to various challenges, particularly concerning justice, legal certainty, and benefits for workers. Analyzing the Implementation of Legal Protection for Parties through Agreements Offered by Authorized Officials Regarding Underhand Debt Dispute with Objects Bound by Purchase. The methodology employed in this study is normative juridical, utilizing Namely, it is carried out through an examination of legislative regulations related to the urgency of remote working regulations in Indonesia. and conceptual approaches involves reviewing the opinions of experts regarding the urgency of remote working regulations in Indonesia. The legal material analysis technique employs Grammatical interpretation, Systematic interpretation, and Teleological interpretation. The research findings indicate that, from philosophical, normative, juridical, and sociological standpoints, there is an urgent need to tailor regulations that can address the unique aspects of remote work, which fundamentally differ from conventional office-based employment.*

Keywords: *Remote Working Regulations; Labor Relations; Legal Vacuum*

INTRODUCTION

The world is currently entering the era of Society 5.0. This revolution can be seen as a response to the flaws of the previous era. At this point, humans become the central figure The Japanese government defines Society 5.0 as a society that focuses on humanity, where there is a balance between

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economic progress and solving social issues through the use of systems that integrate the virtual and physical worlds. Society 5.0 is a concept of a human-centered society that is based on technology. In Society 5.0, everything is connected and driven by data.¹ During this era, people will still have jobs even amid the onslaught of technological advancements.²

The Society 5.0 era indirectly surged rapidly during the Covid-19 pandemic. This phenomenon led various countries around the world, including Indonesia, to implement regional quarantines (lockdowns) as an effort to curb the spread of the Covid-19 virus. This resulted in limitations on mobility, activities, and the movement of society. These limitations had significant impacts across various fields, particularly in the realm of employment. Minister of Manpower, Ida Fauziyah, revealed that according to data from BPS (Central Statistics Agency), there were 29.12 million individuals of working age who were affected by the Covid-19 pandemic.³

The Covid-19 pandemic has brought significant challenges to the employment sector. This situation has required society to adapt quickly to changes, especially regarding the use of digital technology, which is at the core of the 5.0 revolution. The presence of technology allows work to become highly flexible, both in terms of time and location, thus eliminating the constraints that limited work to offices with monotonous schedules. Consequently, despite limitations on mobility, activities, and physical spaces, society can remain productive and meet their livelihood needs. One manifestation of technology's use by society can be seen in the growing prevalence of remote working systems in Indonesia. The COVID-19 pandemic and stay-home orders created an uncharted territory for remote work, where many workers had to switch to a new mode of work with minimum preparation.⁴ The situation was complicated further by the fact

¹ Jakaria, *Peningkatan Ekonomi Masyarakat Menuju Era Society 5.0 Ditengah Pandemi Covid-19* (Penerbit Insani, 2021).

² Hamdan Mustameer, "Penegakan Hukum Nasional Dan Hukum Internasional Terhadap Kejahatan Cyber Espionage Pada Era Society 5.0," *Yustika: Media Hukum Dan Keadilan* 25, no. 1 (2022): 40.

³ Biro Humas Kemnaker, "Menaker Ida: 29,12 Juta Orang Penduduk Usia Kerja Terdampak Pandemi Covid-19," Kementerian Ketenagakerjaan Republik Indonesia, 2020.

⁴ and S. K. Parker. Bin, W., Y. Liu, J. Qian, "Achieving Effective Remote Working during the COVID-19 Pandemic: A Work Design Perspective," *Applied Psychology* 70, no. 1 (2021): 16-59.



that many workers simultaneously had to undertake care responsibilities and to facilitate home learning.⁵

Hadi Subhan, an Employment Observer at Airlangga University, noted that remote working had been a trend in several startups long before the Covid-19 pandemic. However, the pandemic's rapid spread accelerated its implementation across nearly all industries. This shift has transformed the focus of work from being process-oriented to outcome-oriented. Regarding this matter, Hadi explained that there are currently no regulations serving as the foundation for remote working in Indonesia.⁶

The term "remote working" first appeared in Norbert Wiener's book titled "The Human Use of Human Beings: Cybernetics and Society" in 1950, using the term "telework." Meanwhile, discussions about remote working began in the United States in 1973 by Jack Nilles. The term "remote working" is also found in various articles, often referred to as "distance working," "remote working," or even "outwork." The commonly used term for remote working in Indonesia is "remote working." According to Schmook, Konradt, and Malecke, telecommuting/remote working is the practice of working within an organization that takes place partially or entirely outside the traditional office using telecommunications and information media. Subsequently, several researchers provided more detailed definitions of remote working, focusing on the utilization of electronic devices such as mobile phones, computers, email, and databases for networking purpose.⁷ Remote working is a term used to describe the practice of working from home or a location outside the office at flexible times. It involves the use of high technology to keep employees connected to their workplace and support flexible working practices.⁸ According to the International Labour

⁵ and R. A. Matthews Vaziri, H., W. J. Casper, J. Holliday Wayne, "Hanges to the Work-Family Interface during the COVID-19 Pandemic: Examining Predictors and Implications Using Latent Transition Analysis," *The Journal of Applied Psychology* 105, no. 10 (2020): 1073–87.

⁶ Gloria Fransisca Katharina Lawi, "Adaptasi Legal Remote Working Perlu Disegerakan," 2020, <https://entrepreneur.bisnis.com/read/20200801/52/1273698/adaptasi-legal-remote-working-perlu-disegerakan>.

⁷ Oswar Mungkasa, "Bekerja Jarak Jauh (Telecommuting): Konsep, Penerapan Dan Pembelajaran," 2020.

⁸ Enrico Battisti, Simona Alfiero, and Erasmia Leonidou, "Remote Working and Digital Transformation During the COVID-19 Pandemic: Economic–Financial Impacts and



Organization (ILO), there is currently no internationally recognized official definition of remote working. However, remote working can be described as a situation where work is performed fully or partially in a different location from the main workplace. This work can be carried out in various different locations.⁹

Indeed, the concept of work design encompasses the notion of remote work (since working virtually represents a different “organization” of one’s tasks compared to working in the office), and has been argued to be relevant to other contemporary work changes, such as the current digital era. Indeed, the concept of work design encompasses the notion of remote work (since working virtually represents a different “organization” of one’s tasks compared to working in the office), and has been argued to be relevant to other contemporary work changes, such as the current digital era. Indeed, the concept of work design encompasses the notion of remote work (since working virtually represents a different “organization” of one’s tasks compared to working in the office), and has been argued to be relevant to other contemporary work changes, such as the current digital era. Indeed, the concept of work design encompasses the notion of remote work (since working virtually represents a different “organization” of one’s tasks compared to working in the office), and has been argued to be relevant to other contemporary work changes, such as the current digital era. Indeed, the concept of work design includes the idea of remote work (as working virtually represents a different “organization” of one’s tasks compared to working in an office), and is considered relevant to other contemporary changes in work, such as the current digital era.¹⁰

Remote working, or working from home, generally shares similarities with the Work From Home (WFH) system, but there are distinctions between the two. As explained by William, "The most noticeable difference lies in the timing. The working hours for office and WFH are the same, but

Psychological Drivers for Employees,” *Journal of Business Research* 150, no. June (2022): 38–50, <https://doi.org/10.1016/j.jbusres.2022.06.010>.

⁹ International Labour Organization, “COVID-19: Guidance for Labour Statistics Data Collection,” International Labour Organization, 2020.

¹⁰ Parker S.K & Grote. G, “Automatiion, Algorithms, and Beyond: Why Work Design Matters More than Ever in a Digital World,” *Applied Psychology*, n.d.



the location of the work is not in the office. Meanwhile, remote working offers more flexibility, allowing the work to be carried out at any time."¹¹ Another distinction can be observed in the location where the worker performs their tasks. ITAC-2, through its research in 2001, found that remote working, now known as remote working, can be carried out at home, client locations, while traveling, or even in satellite offices.¹² Meanwhile, WFH is a situation where workers perform their tasks remotely, but exclusively from home. Indonesian companies that have implemented this working system include Flip.id, Bibit, Amarta, ALAMI, and Bilibli.¹³

Remote working has numerous advantages and benefits for both employees and employers (companies). Generally, Heathfield in his book explains the primary benefits of remote working for employees are having more flexibility in managing family affairs, enjoying quality time with their families, and living a more comfortable life. Working under this system allows employees to choose when they should be at home, outside the office, or at the office. Remote workers can avoid traffic congestion, thereby reducing stress levels, commuting time, and travel expenses. They can relish the satisfaction of managing their environment and work schedules independently, giving them a taste of what entrepreneur's experience. Additionally, working with such freedom is also beneficial in preventing work overload.¹⁴ One of the universities in the US, through a study, has found several benefits of remote working for companies. Many people believe that remote work only benefits employees, but American companies are experiencing its advantages. Remote working proves to be more financially efficient for companies as the cost per employee decreases, productivity increases, revenue rises, and wages become more flexible. Companies can hire workers from various parts of the world at a lower cost through remote interviews. Costs can also be reduced because expenses for

¹¹ Yovita Riski Aulia Dindi dan Riski Damastuti, "POLA KOMUNIKASI PEKERJA FULL REMOTE WORK (STUDI KASUS PADA PEKERJA VISUALABS)," *MASSIVE: Jurnal Ilmu Komunikasi* 2, no. 1 (2022): 1-15, <https://massive.respati.ac.id/index.php/massive/article/view/59/pdf>.

¹² Oswar Mungkasa, "Oswar Mungkasa, "Bekerja Dari Rumah (Working From Home/WFH): Menuju Tatanan Baru Era Pandemi COVID 19," *Perencanaan Pembangunan* 4, no. 2 (2020): 126.

¹³ Silvia Chandra, "10 Perusahaan Indonesia Yang Menerapkan Sistem Work From Anywhere Permanen," 2023, <https://id.prosple.com/career-planning/10-perusahaan-indonesia-yang-menerapkan-sistem-work-from-anywhere-permanen>.

¹⁴ Oswar Mungkasa, "Bekerja Jarak Jauh (Telecommuting): Konsep, Penerapan Dan Pembelajaran."



accommodation, telephone usage, stationery, and office space decrease. Company expenditures can also be reduced in terms of employee wages, such as meal and transportation allowances that are no longer required.¹⁵

Remote working brings many advantages for both employees and employers, but these benefits are not without various issues that can be detrimental, including problems related to wages, working hours, and social security for workers. This is due to the lack of comprehensive legal regulations governing remote work. The absence of specific regulations in this regard creates confusion about the rights and responsibilities of both employees and employers in companies implementing remote working. For instance, an employee residing in Yogyakarta works remotely for a company located in Jakarta, where the company doesn't have a branch office in the Yogyakarta region. However, the employee is paid an amount equivalent to Yogyakarta's provincial minimum wage (UMP), causing the employee to feel disadvantaged.¹⁶

Referring to Article 88 paragraph (2) of Law Number 13 of 2003 concerning Manpower, also known as the Manpower Law, it stipulates that as an embodiment of income appropriate for a decent human life in line with the elaboration in paragraph (1), the government issues wage policy as protection for workers. Subsequently, paragraph (3) outlines wage policies that serve as protection for workers, including the establishment of a minimum wage, in line with paragraph (2). Similar provisions are explained in Article 81 paragraphs (2) and (3) of Law Number 11 of 2020, commonly referred to as the Job Creation Law. Referring to Article 88 paragraph (2) of Law Number 13 of 2003 concerning Manpower, also known as the Manpower Law, it stipulates that as an embodiment of income appropriate for a decent human life in line with the elaboration in paragraph (1), the government issues wage policy as protection for workers. Subsequently, paragraph (3) outlines wage policies that serve as protection for workers, including the establishment of a minimum wage, in line with paragraph (2). Similar provisions are explained in Article 81 paragraphs (2) and (3) of Law Number 11 of 2020, commonly referred to as the Job Creation Law.

Similarly, regarding working hours, overtime pay, and social security for workers, there are no specific regulations addressing these aspects for

¹⁵ Oswar Mungkasa.

¹⁶ Leli Veronica Lumban Gaol, ""Bekerja Jarak Jauh, Upah Minimum Mana Yang Berlaku?," Hukum Online, 2023, <https://www.hukumonline.com/klinik/a/bekerja-jarak-jauh-upah-minimum-mana-yang-berlaku-lt63d8d0be2a0f2>.



jobs using the remote working system. A worker who is engaged in remote working for Company X has revealed that their employment agreement does not include clear provisions regarding working hours, allowing the employer to contact the worker freely even late at night. The worker also mentioned not receiving any overtime pay despite working on Sundays or national holidays. Additionally, this worker does not receive any form of social security benefits. Furthermore, the employment agreement does not contain any clauses indicating that the work is conducted under the remote working system.

For jobs conducted within a physical office, matters concerning working hours, overtime pay, holidays, and social security for workers are regulated under labor laws. In terms of working hours, labor laws stipulate a 40-hour work week for a period of 1 week. Special provisions regarding working hours apply to female workers under 18 years of age and pregnant female workers. In contrast, remote working offers more flexible working hours, potentially allowing employers to employ workers for more hours than specified by the law.

Regarding overtime pay, labor laws state that employers who require workers to work beyond the stipulated hours must provide overtime pay. However, this becomes challenging to implement within the flexible timeframes of remote working. The blurred boundaries between work and rest periods make it difficult to determine specific guidelines for overtime pay. Concerning holidays, labor laws assert that workers are not obliged to work on official holidays. If employers require workers to work on such days, they are obligated to provide overtime pay. Yet, flexible working hours are often used as a justification by employers to keep workers working on official holidays.

Similarly, with social security for workers, labor laws guarantee that every worker and their families are entitled to social security benefits. According to these regulations, all workers, whether they work in an office or remotely, should have equal rights to social security benefits.

Until now, remote working in Indonesia has been based solely on work agreements outlined in employment contracts. Employment contracts establish the working relationship between the employer (company) and the worker (employee). However, the absence of legal provisions regarding remote working systems has made the working relationship between employers and workers more akin to a private arrangement. There are no regulations specifying the standards that should be included in employment contracts for remote working. Employment contracts are the



fundamental basis of the legal relationship at the core of labor law. By entering into an employment contract, a working relationship is formed between the employer and the relevant worker, subject to provisions related to labor laws. These provisions pertain to work conditions, social security, health and safety at work, as well as dispute resolution and contract termination.

An employment contract is considered a "contract of adhesion" as the parties involved, particularly the worker, cannot freely negotiate its terms. Despite this, both parties in the employment relationship must still adhere to the provisions of labor laws.¹⁷ Within an employment contract, there are indications of a relationship of subordination that reflects a hierarchical connection between superiors and subordinates. The employment relationship between workers and employers can be analyzed from both a legal (juridical) perspective and a sociological perspective (social). From a legal perspective, workers and employers are theoretically considered equals, both holding positions on par with the law (equality before the law). However, from a sociological perspective, we cannot disregard the fact that by signing an employment contract, workers may lose their autonomy. The binding nature of the employment contract may make workers feel as though they are selling their skills and intellectual capacities. This can lead to workers conforming to the needs of employers in utilizing their labor. This relationship of subordination tends to empower employers to act arbitrarily towards workers in the pursuit of maximizing profits.

The popularity of remote working is driven by its appeal to individuals seeking freedom and flexibility in managing their work hours, enabling efficiency in terms of both time and costs. It allows for working from home, which grants more time for family, and presents broader job opportunities, including those from foreign companies. For individuals without specific responsibilities, the flexibility offered by remote working might seem commonplace. However, for those with specific obligations such as stay-at-home mothers who need to work while taking care of their children or students who need to balance work with their studies remote working truly becomes a solution that brings tangible benefits. This is why, even if the terms of employment contracts regarding wages, working hours, and social security benefits do not align with the standards outlined in labor laws, workers are still willing to agree to such contracts. These reasons serve as the foundation that mere employment contracts are insufficient to

¹⁷ Aloysius Uwiyono et al., *Asas-Asas Hukum Perburuhan* (Depok: Rajawali Pers, 2018).



provide fairness, legal certainty, and overall benefits, particularly for workers. Employers primarily aim to maximize profits, while workers' main goals are to meet their livelihood needs and achieve well-being. The divergence of interests between workers and employers is the root cause of disputes between the two parties. As a result, the role of the government is expected to provide legal certainty through policies that are equitable and beneficial for all parties, especially for workers who often lack the ability to negotiate the terms of their employment contracts.

Indonesia, as a rule of law country, mandates that the employed system must consistently adhere to the provisions outlined in labor laws. Labor law encompasses a set of regulations governing all circumstances when the workforce engages in work for others in exchange for wages or other forms of compensation.¹⁸ From a philosophical perspective, upon deeper examination, based on the 1945 Constitution, Indonesia falls under the concept of a Welfare State. This concept mandates the state to shoulder the responsibility for the well-being of its citizens through intensive intervention and accountability in economic matters and all development endeavors aimed at achieving maximum societal welfare. A state that embraces the concept of a welfare state has public policies centered around services, assistance, protection, or the prevention of social issues.¹⁹ Presently, labor laws in Indonesia have not adequately accommodated the concept of remote working, which results in a lack of legal protection for workers operating under this system.

In accordance with the mandate of Article 27 of the 1945 Constitution of Indonesia, all citizens are granted equal position under the law and government without exception, and every citizen is entitled to a decent job and livelihood for humanity. Furthermore, as elaborated in Article 28D paragraph (1) of the 1945 Constitution, every person has the right to work and to receive fair treatment and a just wage in accordance with their rights as workers and human beings:

"Every person has the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law."

Followed by paragraph (2), namely:

¹⁸ Zaeni Asyhadie dan Rahmawati Kusuma, *Hukum Ketenagakerjaan Dalam Teori & Praktik Di Indonesia* (Rawamangun: Prenadamedia Group, 2019).

¹⁹ V. Hadiyono, "Indonesia Dalam Menjawab Konsep Negara Welfare State Dan Tatangannya," *Politik Hukum Dan Kekuasaan* 1, no. 1 (2020): 23.



"Every person has the right to work and to receive fair and reasonable remuneration and treatment in their employment relationship."

Going further, referring to the considerations of labor laws, in the process of carrying out national development, labor plays a crucial role and holds a significant position as both agents and targets of development. Thus, labor development is necessary to enhance the quality and participation of the workforce in development and to strengthen the protection of workers and their families in line with human dignity. This protection aims to ensure the fundamental rights of workers and to guarantee equal treatment without discrimination based on any grounds, in order to achieve the welfare of workers and their families, while also considering changes and advancements in the business world.

Jeremy Bentham, a British philosopher and the founder of utilitarianism, stated that both the state and the law exist for the sake of true benefit, which is the happiness of the majority of the people. Bentham is well-known for his motto that the purpose of the law is to achieve the greatest happiness for the greatest number. Curzon, who also adheres to utilitarianism, mentioned that utilitarianism is a moral philosophy that defines the "rightness" of an action based on its contribution to the general happiness and considers the highest good as the "greatest happiness of the greatest number." In essence, this philosophy considers the primary goal of the law to be providing the maximum benefit or happiness to as many members of society as possible.²⁰

Based on a survey conducted by the American research firm Enterprise Technology Research (ETR), involving over 1,200 Chief Information Officers (CIOs) from various companies and industries worldwide, it was found that 72% of the respondents are currently working remotely. Additionally, 48.6% of the CIOs reported that the company's productivity has increased since the implementation of remote working policies, while 28.7% reported a decrease in productivity. This demonstrates that remote working policies offer significant benefits, yielding productivity levels equivalent to or even better than traditional office work, particularly in sectors such as technology.²¹

²⁰ Achmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)* (Jakarta: Kencana Prenada Media Group, 2009).

²¹ Institut Bisnis dan Teknologi Indonesia, "Model Kerja Masa Depan: Trend Remote Working!," Institut Bisnis dan Teknologi Indonesia, 2023.



In response to the rapid development of remote working systems, various countries around the world have begun to make adjustments by formulating policies in the form of legislative regulations that can accommodate remote work. Some countries even have regulations specifically addressing remote working, including Turkey, Thailand, and Argentina. In Turkey, remote working was initially regulated under the Turkish Labour Act No. 4857, and now the country has specific regulations known as the Remote Work Regulation (RWR). In Thailand, provisions related to remote working are governed by The Labor Protection Act (No. 8) B.E. 2566. Furthermore, remote working policies in Argentina are regulated by the Teleworking Law No. 27,555 and Regulatory Decree No. 27/202. Generally, within the regulations of these countries, it is suggested that employment agreements include clauses about remote working. These clauses cover various aspects such as the definition of remote working, the standards that should be included in the employment agreement, as well as the rights and obligations of both employees and employers implementing remote working systems.

Remote working is considered effective in addressing workforce flexibility issues across various parts of the world, including Indonesia. In the future, remote working could even become a solution to enhance efficiency and work productivity. Therefore, the implementation of remote working systems in Indonesia requires a foundation in the form of regulations that not only provide legal certainty and fairness but also maximize benefits for all parties involved, especially employees. The existence of clear regulations regarding remote working serves as a guideline for companies implementing remote working systems in Indonesia and is also useful in preventing conflicts or disputes between employees and employers.

Based on the background provided above, the legal issue in this research pertains to the absence of legal norms regarding the remote working system in Indonesia. This study will comprehensively analyze the urgency of regulating the remote working system in Indonesia.

THEORETICAL BASIS

Legal Certainty Theory

The theory of legal certainty will be utilized in this study as an analytical framework to assess the urgency of regulating the remote working system in Indonesia. Legal certainty is expected to clarify the rights and obligations of both workers and employers implementing the remote



working system, including a wage system that adheres to the principle of legal certainty, and provide legal protection especially for workers. The notion concerning the principle of legal certainty was originally popularized by Gustav Radbruch in one of his works titled "*Einführung In Die Rechtswissenschaften*" (Introduction to Legal Studies). Radbruch introduced three fundamental values in law, namely *Zweckmassigkeit* (Utility), *Gerechtigkeit* (Justice), and *Rechtssicherheit* (Legal Certainty).²²

The existence of this principle is interpreted as a condition in which the law is definitive due to the presence of real force behind the relevant legal aspects. The principle of legal certainty serves as a form of protection for seekers of justice against arbitrariness, *meaning* that individuals will and can obtain certain things desired for specific circumstances.²³ This statement is in line with the points made by Van Apeldoorn, stating that there are two aspects of legal certainty, namely the establishment of law for legal security and something concrete. This signifies that seekers of justice aim to comprehend the legal aspects related to a specific matter before the case and protection for those seeking justice begins.²⁴

Jan M. Otto also explains that legal rules capable of creating legal certainty are those that are born through and can reflect the culture existing in society. The theory of legal certainty proposed by Jan M. Otto can be called genuine legal certainty or realistic legal certainty, meaning that legal certainty requires there to be harmony between the state and the people who have an orientation and understanding of the legal system of that state.

According to Jan Michiel Otto's opinion, genuine legal certainty can have a more juridical dimension. However, it is limited to the five situations explained above. Jan M. Otto also argues that the law must be enforced by law enforcement agencies tasked with ensuring legal certainty for the sake of maintaining order and justice in society. In contrast to Gustav Radbruch, who stated that legal certainty is one of the purposes of the law, Sudikno Mertokusumo expressed that legal certainty is a guarantee that the law can function properly. In other words, legal certainty ensures that individuals who have rights are those who have received decisions from the legal process itself.

²² Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2012).

²³ Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum* (Bandung: Citra Aditya Bakti, 1993).

²⁴ Mario Julyano dan Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Crepido* 1, no. 1 (2019): 13-22.



Thus, legal certainty is the implementation of the law in accordance with its content. Consequently, the public can ensure that the existing and stated laws can be enforced. In understanding the values of legal certainty, it is important to note that these values are closely related to positive legal instruments and the role of the state in realizing these positive legal instruments.

Legal Protection Theory

In this study, the theory of legal protection will be used as an analytical tool to determine the forms of legal protection for workers who engage in remote working. Satjipto Raharjo explains that legal protection is the shelter provided for human rights that have been infringed upon by others, and this protection is extended to society so that they can enjoy all the rights granted by the law. This notion of legal protection is considered a measure to organize various interests for society, thereby preventing conflicts between interests and ensuring the enjoyment of all rights provided by the law.²⁵ The inspiration for the concept of legal protection by Satjipto Raharjo is based on the ideas put forth by Fitzgerald regarding the purposes of law, which include coordinating and integrating various interests within society through efforts to limit and safeguard those diverse interests.²⁶

In other words, legal protection is a representation of the function of law, which is a concept where the law can provide justice, order, certainty, utility, and peace. The opinions quoted from several experts regarding legal protection are as follows.²⁷

- (1) According to Satjipto Rahardjo, legal protection is the effort to protect someone's interests by allocating a Human Rights power to them to act in the pursuit of their interests.
- (2) According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that are inconsistent with legal rules, in order to achieve order and tranquility, thus enabling humans to enjoy their dignity as human beings.
- (3) According to Muchsin, legal protection is an activity to protect individuals by harmonizing the values or principles that manifest in attitudes and actions in creating order in human interactions.

²⁵ Rahardjo, *Ilmu Hukum*.

²⁶ Tedi Sudrajat dan Endra Wijaya, *Perlindungan Hukum Terhadap Tindakan Pemerintahan* (Rawamangun: SinarGrafiika, 2020).

²⁷ Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi* (Jakarta: Sinar Grafika, 2009).



- (4) According to Philipus M. Hadjon, it is always related to power. There are two powers, government power and economic power. In relation to government power, the issue of legal protection for the people (the governed) against the government (the governing). In relation to economic power, the issue of legal protection is the protection for the weak (economically) against the strong (economically), for example, protection for workers against employers.

RESEARCH METHODS

Referring to the elaboration of the background, including the problem statement, this study will employ normative legal research, which takes into account the principles of law that are applicable, including legal certainty, justice, and utility²⁸. This study will focus on norms and regulations related to the urgency of regulating the remote working system in Indonesia, as for this type of research, legal concepts are things written in laws and regulations or legal concepts as norms or rules as a reference for human behavior that is considered go.²⁹

Meanwhile, for the approach, three approaches are used, namely the statutory approach and conceptual approach. As for the primary legal materials used, they include the Civil Code (Book Three on Contracts), Law Number 13 of 2003 on Manpower. State Gazette of the Republic of Indonesia Year 2003 Number 39, Law Number 11 of 2020 on Job Creation. State Gazette of the Republic of Indonesia Year 2020 No. 245. Additional State Gazette of the Republic of Indonesia Number 6573, Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation. State Gazette of the Republic of Indonesia Year 2022 No. 238. Additional State Gazette of the Republic of Indonesia Number 6841, Government Regulation Number 36 of 2021 on Wages. State Gazette of the Republic of Indonesia Year 2021 No. 46. Additional State Gazette of the Republic of Indonesia Number 6648. The technique of analyzing legal materials in this study uses three interpretations, namely grammatical, systematic, and teleological.

²⁸ Sudikno Mertokusumo, *Penemuan Hukum* (Yogyakarta: Liberty, 2004).

²⁹ Peter Muhamad Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005).



RESULTS AND DISCUSSION

The Urgency of Remote Working System Regulation in Indonesia from a Philosophical Perspective

The philosophical foundation is the consideration or rationale that reflects that the regulations established take into account the worldview, consciousness, and legal principles that encompass the spiritual and philosophical aspects of the Indonesian nation derived from Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia. Pancasila and the Preamble of the 1945 Constitution provide a philosophical foundation for the necessity of ensuring decent employment for all Indonesian citizens. Pancasila is not only a national symbol, but beyond that, Pancasila also signifies the direction and purpose of the Indonesian nation towards a just and prosperous society. As the state ideology containing the noble values of the nation, Pancasila should adorn various aspects of societal life, nationhood, and governance, including in the labor sector in Indonesia. Pancasila is the foundation of the Unitary State of the Republic of Indonesia, and therefore, all prevailing laws and regulations must not contradict the values of Pancasila. The government, as the policy-maker, must not forget that regulations in Indonesia must be formulated by applying the values of Pancasila, which constitute the philosophical foundation of the state.

Based on the second principle of Pancasila, which states "A Just and Civilized Humanity", every citizen has the right to obtain a decent life and to be treated fairly within society. In relation to employment, the implementation of this second principle of Pancasila includes rights such as the right to work for everyone, the right to fair wages, the right to associate and assemble to advocate for one's interests, the right to due process of law, the right to equal treatment, the right to personal privacy, and the right to freedom of expression.³⁰

The right to work or the right to employment is a human right. This is based on several factors,³¹

- (1) Working is inherent to the human body. Work is an activity of the body and therefore cannot be separated from the human body.

³⁰ Pusdatin, "Ini Contoh Hak Dan Kewajiban Warga Negara Berdasarkan Pancasila," Badan Pembinaan Ideologi Pancasila Republik Indonesia, 2021, <https://bpip.go.id/berita/1035/972/ini-contoh-hak-dan-kewajiban-warga-negara-berdasarkan-pancasila.html>.

³¹ Shanto, "Hak Atas Pekerjaan Dan Penghidupan Yang Layak," SPNews, 2016, <https://spn.or.id/hak-atas-pekerjaan-dan-penghidupan-yang-layak/>.



- (2) Working is a human expression. Through work, humans perceive and manifest themselves as humans, while also building a more humane life and environment. Therefore, by engaging in work, humans become whole beings, and through work, humans can determine their own lives as independent individuals.
- (3) The right to work is also a human right because work is linked to the right to life.

The right to fair wages is a legal entitlement received and claimed by an individual when they agree to work for a company. With the right to fair wages, an individual has the right to receive compensation or salary that corresponds to their contribution in the work they perform. This right involves the principle of fairness in determining the amount of wages based on factors such as the type of work, level of education, experience, and responsibilities undertaken:³²

- (1) Every worker has the right to be paid or receive wages.
- (2) Every worker has the right to not only receive a salary but also has the right to a fair salary, which corresponds to the work they have performed.
- (3) In principle, there should be no different or discriminatory treatment regarding wages for all workers; in other words, the principle of equal pay for equal work must be applied.

Furthermore, regarding the right to associate and assemble, workers must be recognized for their right to associate and assemble. This aims to unite workers in their efforts to protect the rights and interests of all members. Therefore, labor unions play a crucial role. There are two important ethical foundations for the right to associate and assemble:³³

- (1) This is one of the primary manifestations of freedom, which is a fundamental human right.
- (2) Through the right to associate and assemble, workers can collectively strive to protect their interests.

Moving on to the right to due process of law. This right applies when a worker is accused and threatened with certain penalties due to alleged violations or mistakes. Every worker should be given the opportunity to respond to their actions, and if the worker is proven innocent, they should

³² Shanto.

³³ Shanto.



be given a chance to defend themselves. In addition, there is the right to equal treatment. In principle, every worker should be treated equally.

The Urgency of Remote Working System Regulation in Indonesia from a Normative Juridical Perspective

Indonesia is a constitutional state, not merely based on authority. The statement that Indonesia is a constitutional state is clearly stated in Article 1, paragraph (3) of the 1945 Constitution, which declares that "The State of Indonesia is a constitutional state." The concept of a constitutional state cannot be separated from the principle of the rule of law. The rule of law asserts that the highest authority lies in the law, and there is no other authority besides the law itself. The importance of the rule of law reflects the characteristics of a democratic constitutional state, where the role and central position of the people determine the direction of policies. In a democratic constitutional state, the people play a key role in decision-making and determining the policies to be implemented.³⁴ The concept of a constitutional state has been the aspiration of the founding fathers since the early struggle for independence, which is clearly reflected in the Preamble of the 1945 Constitution. Its main principles encompass "independence, justice, humanity," and assert that the government is obligated to protect all citizens and promote the general welfare. With these principles, it is hoped that the law will serve as a tool to protect and uphold the rights of all citizens and every individual from unfair treatment and arbitrary actions. The rights of citizens and human rights will be guaranteed and respected within the framework of Indonesia as a constitutional state.³⁵

Based on the principle of the rule of law, governance is conducted according to the law. Therefore, in administering a government, one must adhere to the legal regulations that serve as the guidelines for the organization of a nation based on the will of the people. Legal regulations contain legal norms that possess a general and abstract nature. This generality is because legal norms apply comprehensively to all legal subjects. Meanwhile, the abstract nature of legal norms is indicated by their lack of concreteness in governing the legal events that are the subjects of regulation. Consequently, well-founded legal regulations should be based

³⁴ Vera Bararah Barid M. Jeffri Arlinandes Chandra, Rofi Wahanisa, Ade Kosasih et al., "Tinjauan Yuridis Pembentukan Peraturan Perundang-Undangan Yang Sistematis , Harmonis Dan Terpadu Di Indonesia," *Jurnal Legislasi Indonesia* 19, no. 147 (2022): 5.

³⁵ Andi Mattalatta, "Politik Hukum Perundang-Undangan," *Legislasi Indonesia* 6, no. 4 (2009): 571, <http://e-jurnal.peraturan.go.id/index.php/jli/article/download/334/218>.



on several foundations, one of which is the juridical foundation. The juridical foundation relates to legal issues associated with the substance or subject matter being regulated, necessitating the creation of new laws. Some of these legal issues include outdated regulations, inconsistencies or overlaps in regulations, types of regulations that fall under laws and therefore have weak validity, regulations that exist but are inadequate, or regulations that do not yet exist at all.³⁶

The Indonesian state, in its effort to implement and uphold the law, often faces challenges related to the developments taking place in society. This is a natural consequence of the progress of global civilization. Changes and developments within society become problematic when existing legal regulations are no longer adequate or cannot keep up with the rapid pace of societal advancements. As a result, legal vacuums or gaps occur when there is a lack of applicable laws to address these changes and developments. In relation to employment, there are several regulations that can serve as guidelines, such as the Civil Code (Book Three on Obligations), Law Number 13 of 2003 concerning Manpower, Law Number 11 of 2020 concerning Job Creation, Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, and Government Regulation Number 36 of 2021 concerning Wages.

The Civil Code (KUHPerdata) can be considered as a foundation, especially regarding employment contracts. According to Article 1313 of the Civil Code, an agreement is an act by which one or more persons obligate themselves to one or more other persons. Apart from providing the definition of an agreement, the Civil Code also mentions the conditions necessary for a valid agreement.: 1) Agreement of the parties to be bound; 2) Legal capacity to enter into an obligation; 3) A spesicif subject matter; 4) A lawful cause

If any of the four elements mentioned above are not fulfilled, the agreement can be voided (in cases of subjective conditions) or void ab initio (in cases of objective conditions). In essence, an employment agreement is a contract; therefore, when it comes to general provisions, the employment agreement is also subject to those general provisions. For instance, conditions for a valid agreement, subjects, and objects of the agreement. According to Article 1601a of the Civil Code: "An employment agreement is an agreement where the first party, the worker, commits to provide their

³⁶ M. Jeffri Arlinandes Chandra, Rofi Wahanisa, Ade Kosasih et al., "Tinjauan Yuridis Pembentukan Peraturan Perundang-Undangan Yang Sistematis , Harmonis Dan Terpadu Di Indonesia."



labor to the other party, the employer, in exchange for a wage during a certain period of time."

In the process of national development, labor plays a crucial role and holds a significant position as both the actors and the objectives of development. Therefore, the development of the workforce is necessary to enhance the quality of labor and their roles in development, as well as to provide protection for workers and their families in accordance with human dignity. Hence, in addition to being regulated under the Civil Code, provisions regarding labor are specifically outlined in the Law Number 13 of 2003 concerning Manpower (Labor Law). Article 5 and Article 6 of the Labor Law state that every worker has an equal opportunity to obtain employment without discrimination. Furthermore, every worker is entitled to fair and equal treatment without discrimination from employers.

The relationship between workers and employers is established through an employment agreement. This employment-based relationship gives rise to the application of labor law provisions between the parties. These provisions include conditions of work, social security, health and safety at work, as well as dispute resolution and termination of employment. The regulations encompassed by labor law are derived from legislative regulations and provisions formulated by relevant parties, such as company regulations, employment agreements, or collective labor agreements..³⁷

Referring to the exposition by Schmook, Konradt, and Malecke, remote working is a way of performing work for an organization that is conducted entirely or partially outside the traditional office, aided by information and telecommunication services. Furthermore, several researchers define remote working in more detail, emphasizing the utilization of electronic devices such as gadgets, email, and networked data.³⁸ Remote working generally resembles the Work From Home (WFH) system, yet there are distinctions between the two. William explains, "One very clear difference is in terms of time. Working hours in the office and WFH are exactly the same, while for remote working, the working hours are more flexible, and the tasks can be carried out whenever."³⁹

³⁷ Uwiyono et al., *Asas-Asas Hukum Perburuhan*.

³⁸ Oswar Mungkasa, "Bekerja Jarak Jauh (Telecommuting): Konsep, Penerapan Dan Pembelajaran."

³⁹ Yovita Riski Aulia Dindi dan Riski Damastuti, "POLA KOMUNIKASI PEKERJA FULL REMOTE WORK (STUDI KASUS PADA PEKERJA VISUALABS)."



Referring to the provisions outlined in the Manpower Law, remote working constitutes a method or work system based on an employment agreement, and due to this employment agreement, a working relationship is established between the employee and the employer (company). In general, based on the elements present in the aforementioned working relationship, the remote working system meets these elements. However, in practice, when considering certain factors like wage and specific working hours, there are issues related to these aspects in remote working arrangements. These issues indirectly stem from the flexibility inherent in the remote working system itself. This flexibility grants employees the freedom to work whenever and wherever, without being bound by physical space and time. This aspect then affects certain factors such as wages and working hours.

The Manpower Law has provided limitations regarding working hours, which are 7 (seven) hours per day for work conducted over 6 (six) days in a week, and 8 (eight) hours per day for work conducted over 5 (five) days in a week, resulting in a total of 40 (forty) hours in a week. The Manpower Law also states that every employer is obligated to adhere to these provisions.⁴⁰ However, in practice, an individual working under the remote working system at Company X has admitted that they often work beyond these limitations. The flexible working hours are frequently cited by employers as a reason to contact employees late at night or during rest times, and this flexibility is sometimes even exploited by employers to engage workers on official holidays. This situation arises due to the lack of clear provisions regarding working hours in the employment agreement. The flexible working hours blur the distinction between working time and rest time. Moreover, this flexible working arrangement indirectly affects wages. The Manpower Law stipulates that employers who make employees work beyond the established hours are required to pay overtime wages. However, the ambiguity between working hours and rest hours in the remote working system makes it challenging to enforce this provision.

Furthermore, concerning wages and remuneration, referring to Article 88 paragraph (2) of the Manpower Law, as an embodiment of income in line with a decent standard of living for human dignity, the government issues wage policies as protection for workers. Subsequently, paragraph (3) outlines wage policies as protection for workers in line with paragraph (2), including the establishment of a minimum wage. Similar provisions are also

⁴⁰ K, "Undang - Undang RI No 13 Tahun 2003," Ketenagakerjaan § (2003).



explained in Article 81 paragraph (2) and (3) of Law No. 11 of 2020, also known as the Omnibus Law on Job Creation. In relation to this matter, Article 88E paragraph (2) of Government Regulation in Lieu of Law No. 2 of 2022, also known as the Omnibus Law on Job Creation Government Regulation, states the prohibition for employers to pay wages below the minimum wage. Going into detail, referring to Article 25 of Government Regulation No. 36 of 2021, hereinafter referred to as the Wage Regulation, it is explained that the minimum wage includes both city/regency and provincial minimum wages under specific conditions. Long-distance remote working for a company located in Jakarta, where the company does not have a branch office in the Yogyakarta area, presents a scenario where an employee is receiving a wage equivalent to the Yogyakarta provincial minimum wage (UMP), rather than the Jakarta UMP. As a result, the employee feels disadvantaged by the company.⁴¹ Based on the provisions regarding wages explained above, there are no regulations specifying which minimum wage would apply if the company and the employee are not located in the same area.

Similarly, with regard to social security for workers, according to Article 99 of the Labor Law, every worker and their family is entitled to receive social security benefits. Referring to this provision, both office-based workers and those working remotely should ideally receive the same rights concerning social security benefits. However, in reality, remote workers at PT X do not receive any form of social security benefits. In fact, the employee stated that there is no clause in their employment agreement that mentions remote working. This situation can occur due to the lack of proper legal regulations governing remote working in Indonesia. The absence of specific regulations on this matter creates confusion about the rights and responsibilities of workers and employers in companies that implement remote working.

Based on the theory of legal certainty popularized by Gustav Radbruch in one of his works, "*Einführung In Die Rechtswissenschaften*," there are three fundamental values within the law, namely *Zweckmassigkeit* (Utility), *Gerechtigkeit* (Justice), and *Rechtssicherheit* (Legal Certainty).⁴² Legal certainty is defined as a condition in which the law is definite due to the presence of concrete foundations related to it. Legal certainty serves as a form of protection for seekers of justice against arbitrariness, implying

⁴¹ Leli Veronica Lumban Gaol, ""Bekerja Jarak Jauh, Upah Minimum Mana Yang Berlaku?"

⁴² Rahardjo, *Ilmu Hukum*.



that individuals can and will obtain specific things they desire under certain conditions.⁴³

In-depth concerning legal certainty, Lord Lloyd explained that..., “...law seems to require a certain minimum degree of regularity and certainty, or without that it would be impossible to assert that what was operating in a given territory amounted to a legal system”. Referring to this opinion, it can be expounded that in the absence of legal certainty, individuals do not know how to behave, leading to uncertainty that could potentially trigger chaos due to an unclear legal system. Legal certainty thus points to a law that is applied consistently, steadfastly, and clearly, unaffected by various subjective conditions in its enforcement.⁴⁴

Legal certainty is one of the goals of law and can be seen as an effort to achieve justice and utility. Legal certainty takes on tangible forms through the enforcement and implementation of laws on actions, regardless of the actors involved. Through legal certainty, workers and employers applying remote working systems can anticipate potential outcomes. Certainty is an inherent characteristic of law, especially in written legal provisions. Laws without definite validity can lose their significance as they fail to serve as a reference for societal behavior.⁴⁵

As articulated by Jan Michael Otto, legal certainty is achieved when legal regulations align with the needs of society. Law that can establish legal certainty emerges from society and reflects its cultural values. This type of legal certainty refers to what is known as realistic legal certainty, which necessitates alignment between the state and the people in understanding and adapting to the legal system.⁴⁶

Working with a remote working system in Indonesia is solely based on the employment agreement between the employer and the employee. The absence of legal regulations regarding remote working creates a working relationship that is more of a private arrangement. There is no regulation that serves as the foundation for determining the standards that should be included in an employment agreement for remote working. This inadequacy fails to provide fairness, legal certainty, and benefits, especially for employees. Therefore, a regulation is needed that can accommodate

⁴³ Mertokusumo, *Bab-Bab Tentang Penemuan Hukum*.

⁴⁴ Mario Julyano dan Aditya Yuli Sulistyawan, “Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum.”

⁴⁵ Cst Kansil, *Kamus Istilah Hukum* (Jakarta: Gramedia Pustaka Utama, 2009).

⁴⁶ B. Arief Shidarta, *Hukum Dan Logika* (Bandung: Alumni, 2006).



specific aspects related to remote working, which in practice cannot be equated with typical office-based work.

CONCLUSION

Currently, there is still a legal void concerning the remote working system in Indonesia. From a philosophical perspective, the absence of regulations capable of accommodating remote working can to some extent disrupt human rights as mandated by Pancasila and the 1945 Constitution. Based on the concepts of a welfare state and validity that meets the principles of legal positivism as stated by Radbruch, Indonesia is urged to create policies in the form of regulations for the remote working system, aiming to protect the fundamental rights of workers from arbitrary actions of employers. From a normative juridical perspective, the absence of regulations regarding remote working results in the employment relationship between employers and employees leaning more towards a private arrangement. As a consequence, there is no basis for determining the standards that should be included in employment agreements for remote working.

This is insufficient to provide justice, legal certainty, and benefits, especially for workers. From a sociological perspective, there is a fact that by signing an employment agreement, laborers lose their freedom. Employment agreements establish a hierarchical (subordination) relationship between workers and employers, which tends to lead employers to act arbitrarily towards employees. The differences in interests between workers and employers in the remote working system are the root cause of disputes between the two parties. Therefore, based on a comprehensive analysis encompassing philosophical, normative juridical, and sociological perspectives, it is highly urgent to establish regulations that can accommodate the remote working system in Indonesia. This system, in practice, cannot be equated with regular office-based work.

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